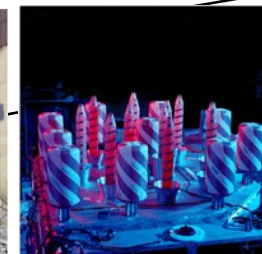


Welcome

ITAR and Small Business

- Northeast Regional Council for Small Business



September 4, 2016

Introduction

- Overview / terms
- What is classified as ITAR
- What does ITAR require
- How it effects Small Business
- How SBA can help

September 4, 2016

Overview

- Exports and imports are controlled by U.S. law to support U.S. foreign policy and protect national and economic security.
- Exports are regulated by:
 - ❖ U.S. Dept. of State under the International Traffic in Arms Regulations (designated as a defense article under the U.S. Munitions List)
 - ❖ U.S. Dept. of Commerce under the Export Administration Regulations (classified as a commodity under the Commodities Control List)

- **What is an export?**

It is the release of goods, technical data or the provision of defense services to a foreign person or entity

- **Who is a foreign person or entity?**

- ❖ A non-U.S. citizen or non-permanent resident (“green card” holder)
- ❖ A foreign corporation or group not incorporated to do business in the U.S.
- ❖ Foreign governments or agencies, organization, even if they are located in the U.S. (diplomatic missions)

What is classified as ITAR?

- Specifically designed, developed, configured, adapted or modified for military application; and
- Does not have a predominant civilian application; or
- Has significant military or intelligence applicability
- Current intended use of the article or service (i.e. for military or civilian purpose) is irrelevant

What does ITAR require?

- Release of defense articles (including technical data) or defense services is restricted to U.S. persons only unless an export license has been obtained
- Applications are made for export licensing (permanent and temporary, import and export, Technical Assistance Agreements and Manufacturing License Agreements)
- Extensive record keeping
- Responsibility for all defense articles (including tech data) and defense services to ensure that it is not exported illegally
- Registration with the State Department by all manufacturers or exporters of defense articles or furnishing defense services (even if the manufacturer does not engage in exporting); a precondition to the issuance of any license.
- Voluntary disclosures and export violation notification

What does ITAR require?

- Registration includes:
 - Documentation that intended registrant is incorporated or authorized to do business in U.S.
 - Submission of registration statement
 - Whether the intended registrant, CEO, President, Vice-Presidents or other senior officers of officials have ever been indicted or convicted of violating US criminal statutes
 - Whether they are ineligible to contract with, or receive a license or approval to import or export from any USG agency
 - Whether the intended registrant is owned or controlled by foreign persons
 - Registration fee of \$1750 per year
 - Lapse in registration

What does the defense industry require?

- Export certifications by the suppliers
 - Acknowledge that documentation or technical data is subject to U.S. Government export regulations and may restrict access to said tech data and equipment to suppliers' employees who are U.S. citizens and permanent residents
 - Certifies that supplier will comply with all U.S. Government export regulations before disclosing Buyer's tech data, equipment or technology to any foreign person, or assigning a foreign employee to perform work that requires access to such data
 - Certifies that supplier has advised employees of their obligations regarding compliance
 - Certifies that the supplier is responsible for ensuring that all requirements are conveyed to all their sub-tier suppliers that will have access to tech data
 - Certifies that supplier is registered with the State Department and is eligible to obtain import and export authorizations

How it affects Small Business

- \$1750 per year is a lot for some suppliers, especially if ITAR controlled defense articles are only a small part of their business
- E-mails are easily intercepted, and are discouraged by the State Department. Alternatives, such as encryption, is additional cost to the supplier.
- If a supplier employs a foreign person, that person must be segregated from ITAR controlled data, hardware and discussions until an export license has been obtained.

How it effects Small Business

- More paperwork
- Costs
 - Passed along to the buyer
 - Buyer passes it along to their customers
- Turn down business
 - Can be costly to the buyer
 - Less business for the small business, may affect their pricing
- May have to change the way they do business especially hiring practices; may impact their business growth

How SBA can help

- Grants to help defray the cost of registration and/or encryption software
- Education (including seminars) of small businesses so they understand what ITAR entails and how it effects them
- Computer support to firewall networks as needed (recommendations of companies that could provide this at low cost or defrayed by SBA)

Summary

- Small businesses are important to the defense industry; we don't want to lose them
- ITAR requirements are not going to disappear
- ITAR is do-able if we all work together